# STATE OF ARIZONA

## STATE OF ARIZONA

DEC 6 1996

DEPT. OF	INSURANCE
BY CE	INSURANCE

In the Matter of:	)	Docket No. 96A-157-INS
OTIS CHEERFUL CANUPP	)	ORDER
Respondent.	)	
	)	

On December 2, 1996, the Office of Administrative Hearings, through Administrative Law Judge Kip M. Micuda submitted "Recommended Decision of Administrative Law Judge ("Pecommended Decision"), a copy of which is attached and incorporated by this reference. The Director of the Arizona Department of Insurance has reviewed the Recommended Decision and enters the following order:

- 1. The recommended findings of fact and conclusions of law are adopted.
- 2. The Life and Disability insurance agent license issued to Otis Cheerful Canupp is revoked.

### **NOTIFICATION OF RIGHTS**

The aggrieved party may request a rehearing with respect to this Order by filing a written petition with the Office of Administrative Hearings within 30 days of the date of this Order, setting forth the basis for such relief pursuant to A.A.C. R20-6-114(B).

2	County for judicial review pursuant to A.R.S. § 20-166.
3	EFFECTIVE this day of December
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5	John
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8	A copy of the foregoing mailed this 6th day of December, 1996
9	Charles R. Cohen, Deputy Director John Gagne, Assistant Director
10	Catherine O'Neil, Assistant Director Maureen Catalioto, Supervisor
11	Olivia R. Duarte, Investigator Department of Insurance
12	2910 North 44th Street, Suite 210 Phoenix, AZ 85018
13	Thomas, 742 03010
14	Office of Administrative Hearings 1700 West Washington, Suite 602 Phoenix, AZ 85007
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16	Gerrie Marks Assistant Attorney General 1275 West Washington
17	Phoenix, AZ 85012
18	Otis Cheerful Canupp P.O. Box 18290
19	Tucson, AZ 85731
20	Otis Cheerful Canupp 7701 East 34th Street
21	Tucson, AZ 85731
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The final decision of the Director may be appealed to the Superior Court of Maricopa

Director of Insurance

\_ day of December, 1996

1	Otis Cheerful Canupp Aurum Financial Services, Ltd.
2	106 S. Kolb Road Tucson, AZ 85710
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4	Aurum Financial Services, Ltd. 106 S. Kolb Road Tucson, AZ 85710
5	,
6	Lincoln Benefit Life Company P.O. Box 80469 Lincoln, NE 68501
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8	Travelers Life Insurance Company Corporate Tax 5PB One Tower Square
9	Hartford, CT 06183-6014
10	United American Insurance Company P.O. Box 810
11	Dallas, TX 75221
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# IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

No. 96A-157-INS

OTIS CHEERFUL CANUPP,

Respondent.

RECOMMENDED DECISION OF ADMINISTRATIVE LAW JUDGE

HEARING: November 27, 1996

APPEARANCES: Otis Cheerful Canupp, Respondent, failed to appear. Gerrie L. Marks, Assistant Attorney General, appeared representing the Arizona Department of Insurance.

ADMINISTRATIVE LAW JUDGE: Kip M. Micuda

The hearing in this matter was held for the purpose of determining whether the Director of the Arizona Department of Insurance (the "Department") should revoke Respondent's individual life and disability insurance agent license. Evidence was presented and, based upon the entire record, the following Findings of Fact, Conclusions of Law, and Recommended Decision are made:

### **FINDINGS OF FACT**

- 1. Otis Cheerful Canupp, Respondent, is currently licensed as a life and disability insurance agent (License No. 189870). Mr. Canupp's license is due to expire on October 31, 1997.
  - 2. On or about April 24, 1994, a Grand Jury Indictment was filed against

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29 30 Mr. Canupp in Pima County Superior Court. State of Arizona v. Canupp, No. CR45410. The indictment charged Mr. Canupp with five felony counts, including one for Tampering with a Public Record; that is, forging signatures on a guitclaim deed and then filing the document with the Pima County Recorder's Office.

- 3. On December 6, 1994, Mr. Canupp entered into a Plea Agreement on the charges, pleading guilty to Tampering with a Public Record, a Class Six felony.
- On January 19, 1995, the court convicted Mr. Canupp of Tampering with a Public Record, sentencing him to thirty (30) days incarceration, three (3) years probation, community service, and the payment of fines and penalties.

### **APPLICABLE LAW**

- A.R.S. §20-316(A) states that the Director may suspend, revoke, or refuse to renew any license for any of the following reasons:
  - 1. The existence of any cause for which original issuance or any renewal of the license could have been refused.

- 6. Conviction by final judgment of a felony involving moral turpitude.
- A.R.S. §20-290(B) allows the Director to refuse to issue any license if he finds, for example, the following:
  - 2. A record of dishonesty on the part of the applicant in business or financial matters.

6. A record of conviction by final judgment of a felony involving moral turpitude.

#### **CONCLUSIONS OF LAW**

1. This matter is within the jurisdiction of the Director of the Arizona Department of Insurance, pursuant to A.R.S. §20-161.

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- 2. The Department has the burden of demonstrating by a preponderance of the evidence that Mr. Canupp's individual and disability insurance agent license should be revoked.
- Mr. Canupp's Tampering with a Public Record conviction evidences 3. dishonesty on his part in business or financial matters, a violation of §20-290(B)(1). Accordingly, the Director may revoke Mr. Canupp's license, pursuant to §20-316(A)(1).
- 4. Mr. Canupp's conviction also evidences a final judgment of a felony involving moral turpitude, a violation of both §20-290(B)(6) and §20-316(A)(6). "Moral turpitude" encompasses offenses that "involve intentional dishonesty for personal gain." Matter of Kent, 467 A.2d 982, 984 (D.C. App. 1983); see Mungarro v. Riley, 170 Ariz. 589, 590, 826 P.2d 1215 (Ariz. 1992); State ex rel. Dean v. Dony, 161 Ariz. 297, 300. 778 P.2d 1193 (Ariz. 1989); Howard v. Nicholls, 127 Ariz. 383, 388, 621 P.2d 292 (Ariz. 1980). Accordingly, the Director may revoke Mr. Canupp's license, pursuant to either §§20-316(A)(1) or 316(A)(6).
- A.R.S. §20-316(A) does not mandate discipline, rather it gives the Director discretion. Nevertheless, this Judge concludes, in light of the complete record, that this matter is one in which the Director should revoke the license in issue.

### RECOMMENDED DECISION

Based on the foregoing, it is recommended that the Director revoke Otis Cheerful Canupp's life and disability insurance agent license.

Done this day, December 2, 1996.

Kip M. Micuda

Administrative Law Judge

Original transmitted by mail this \_\_\_\_\_\_ day of December, 1996, to:

John King, Director ATTN: Curvey Burton Department of Insurance 2910 North 44th Street, #210 Phoenix, AZ 85018-7256

By Chris Crawford